IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

TUESDAY, THE 4TH JULY 2006 / 13TH ASHADA 1928

CRL.A.No. 879 of 1999(A)

SC.10/1997 of SESSIONS COURT, THODUPUZHA

APPELLANT:

LATHIEF, S/O KHADER,
PAZHAYARIYIL VEEDU, KEERIKODU KARA,
KARIKODU VILLAGE.

BY ADV. SRI.M.N.SUKUMARAN NAYAR(SR.)

RESPONDENTS:

STATE OF KERALA REP. BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR P.M. HABEEB

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04/07/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M.JAMES, J.

CRL.A. 879/1999

DATED THIS THE 4TH DAY OF JULY, 2006

JUDGMENT

The accused, in Sessions Case No.10/1997 on the file of the Sessions Court, Thodupuzha, is the appellant. He was found guilty of the offence punishable under Section 489C IPC and was convicted and sentenced thereunder, to undergo rigorous imprisonment for two years and also to pay a fine of Rs.2,500/-, in default to undergo simple imprisonment for two months.

2. The prosecution case in brief is that on 30.9.1991 at about 7.45 p.m., the appellant, accused, went to the shop of CW3, the father of PW1 and grand father of PW3. He was running a provision shop. The accused demanded two coconuts, by standing in the verandah of the shop. After purchasing two coconuts from CW3, who since expired, tendered MO1, a hundred rupee currency note. CW1 returned the change, after deducting Rs.11/-, the value of the coconuts. On doubting the genuineness of

the note and hearing about the same, the people gathered around. The appellant ran away, others chased him and brought him back to the shop. The police was informed. PW2, the head constable, came to the place of occurrence and seized MO1 currency note, under Ext.P3 seizure mahazar, attested by PW5. The appellant was arrested and the investigation continued.

3. The prosecution examined seven witnesses and marked eight documents, together with MO1, the forged counterfeit currency note of Rs.100/-. It was after appreciating the same, the learned Sessions Judge found the accused guilty and convicted and sentenced him, as stated above.

4. The challenge of the appellant is that the prosecution had failed to prove that there was mens rea, on the part of the appellant. There was no search conducted in the house of the appellant, so as to find out whether there was any forged currency note. In such circumstances, mens rea could not be inferred against the appellant. Yet another contention of the counsel is

that Ext.P3 was not seized directly from the possession of the appellant. Therefore, the counsel submitted that the prosecution had failed to prove the offence, as required by the law.

5. The learned Public Prosecutor, on the other hand, submitted that the prosecution had established the case, as required by the law and therefore, prayed to sustain the conviction and sentence.

6. To prove the case, under Section 489C IPC, the prosecution must establish that:-

(a). MO1 currency note was counterfeit or forged one.

(b). the appellant was in possession of it, and

(c). the appellant, at the time of his possession, knew or had reason to believe that MO1 was a forged or counterfeit currency note.

7. Ext.P7 is the report dated 1.7.1995, reporting that MO1 note is a counterfeit note. It gave various descriptions about the forged nature of MO1 note. There

is absolutely no challenge on Ext.P7 report. Therefore, I hold that MO1 note was a forged one.

8. The evidence of PW1, though he partly turned hostile as well as that of PW3 and the evidence of PW2, the head constable, who prepared Ext.P3 mahazar, reveal that MO1 note was seized from the basket, kept in the shop of the father of PW1. When the genuineness of MO1 note was doubted, the appellant threw it in the basket. When he was questioned by others, he ran away. It was the persons who gathered around, brought him back to the shop. If the accused had no mens rea, or if he was unaware, that MO1 was not a forged or counterfeit currency note, there is no reason why he should run away. I agree that it is the duty of the prosecution to show that the appellant possessed it knowing that fact, and had reason to believe that MO1 was a forged or counterfeit currency note.

9. The learned counsel had relied on Umashanker v. State of Chattisgarh (2001 9 SCC 642), to emphasis that there must be clear case of mens

rea, and even the possession or knowingly using of currency note, is not sufficient to make out the case, under section 489C IPC. I had already discussed about the evidence of Pws 1, 2, 3 and 5. The minor variations notwithstanding, when the totality of the evidence is appreciated. It show that the appellant was fully aware that MO1 note, which he had possessed, was a counterfeit currency note and he tendered it knowing the same. Therefore, even accepting the plea, contained in Umashanker's case, cited supra, I hold that there is a clear case of mens rea, on the part of the appellant.

10. The learned counsel also relied on Kuttan Nadar Wilson v. State (2002 (2) KLJ 362), to argue that the house of the petitioner was not searched. Merely because the investigating officer failed to do the act, will not enable the accused to be acquitted. The defect in the investigation is not a ground to acquit the accused, unless it materially affect the case as a whole.

11. When the evidence on record is fully appreciated, I hold that the Sessions Court was right in

holding that the accused is guilty of the offence, under Section 489C IPC and convicting him, thereunder.

12. The learned counsel for the appellant had submitted that the sentence is disproportionate, in the circumstances of this case. Maximum sentence prescribed under Section 489C IPC, is for seven years or with fine or with both. I had gone through Section 313 Cr.P.C. statement of the appellant. He did not state any circumstances. However, the occurrence having taken place in the year 1991 and the accused having remained under the threat of the sentence for this longer period. , I reduce the rigorous imprisonment from two years to six months. However, I enhance the fine amount of Rs.2,500/- to Rs.25,000/-, in default the appellant shall undergo simple imprisonment for six months. The appellant is entitled for set off, as per the law.

The appeal is partly allowed as above.

J.M.JAMES
JUDGE

mrcs